

STATE OF MICHIGAN
COURT OF APPEALS

MARK G. RYZYI, WILLIAM P. RYZYI, and
HELEN RYZYI,

UNPUBLISHED
April 19, 2011

Petitioners-Appellants,

v

TOWNSHIP OF BAGLEY,

No. 295759
Tax Tribunal
LC No. 360631

Respondent-Appellee.

Before: TALBOT, P.J., and SAWYER and M. J. KELLY, JJ.

PER CURIAM.

Petitioners appeal by right the Michigan Tax Tribunal's (MTT) December 2, 2009, order dismissing petitioners' appeal relating to the taxable value of their single-family residence. We remand the case to the MTT for clarification and retain jurisdiction. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

On December 28, 2004, petitioners William and Helen Rzyzi conveyed to petitioner Mark Rzyzi an undivided 80 percent interest as tenants in common in a single-family residence located in Bagley Township. In the property transfer affidavit signed by Mark Rzyzi and submitted to respondent on February 14, 2005, petitioners claimed an exemption from the adjustment of the property's taxable value under MCL 211.27a(7)(h) on the basis that the transfer created or ended a joint ownership. Nevertheless, respondent uncapped the taxable value and assessed the tentative taxable value for 2005 at \$167,200. However, following an appeal by Mark Rzyzi, respondent's Board of Review found that the property had been uncapped in error.

In a letter dated March 4, 2009, however, respondent informed petitioners that it had determined that the 2004 transfer of the property was not, in fact, exempt from adjustment of the taxable value because William and Helen Rzyzi had transferred the property as tenants in common, not as joint tenants, as required by MCL 211.27a(7)(h). Respondent stated it intended to uncap the taxable value for 2005 and collect back taxes based upon the new taxable values. Respondent also petitioned the Board of Review to change the taxable value of the property for 2009. Respondent's petition was granted.

On April 9, 2009, petitioners appealed the changes of the taxable value to the MTT. Petitioners also argued that the assessed values and state equalized values for the years 2005 through 2009 should be adjusted as well because they were not based on the true market value of the property.

On June 10, 2009, the MTT concluded that it did not have authority over petitioners' "true cash appeal" or "assessment appeal" for the 2005 through 2008 tax years because, while respondent had changed the taxable values for those years by uncapping the property as of 2005, respondent had not changed its previous determination of the true cash values for those years, and petitioners had failed to timely challenge the assessments in 2005, 2006, 2007, and 2008, as required under MCL 205.735 and MCL 205.735a. The MTT also found that petitioners could not seek review of the assessments for those tax years under MCL 211.53a because they had not demonstrated a clerical error or mutual mistake of fact. The MTT dismissed petitioners' appeal with respect to the property's true cash value, but concluded that it had authority over the purported error in uncapping the taxable value for the 2005 through 2009 tax years. It stated that respondent lacked the authority to uncap the property's taxable value for the 2005 through 2008 tax years under MCL 211.27a or 211.27b, assuming that the property transfer affidavit was properly filed. Lastly, the MTT concluded that under MCL 211.29 and MCL 211.30, respondent did have authority to uncap the taxable value for the 2009 tax year to correct a "failed uncapping" in previous tax years. The MTT ordered respondent to inform it in writing as to whether and when petitioners filed a property transfer affidavit.

On September 21, 2009, the MTT issued a second order concerning respondent's decision to uncap the taxable values. The MTT concluded that because petitioners had filed a property transfer affidavit in 2005, respondent lacked the authority to uncap the property's taxable value for the 2005 through 2008 tax years. It found that if respondent wanted to uncap the taxable value for the 2005 tax year, it should have done so in 2005. However, the MTT reaffirmed that respondent could uncap the taxable value for the 2009 tax year based on what the taxable value would have been had respondent uncapped it in 2005.

The MTT did not decide whether the 2004 transfer should have resulted in an uncapping for the 2005 tax year. The MTT vacated respondent's uncapping of the taxable values for 2005 through 2008, but also ordered that respondent's new calculations for the taxable values for 2005 through 2008 remain as the final taxable values. As to petitioners' assessment appeal for the 2005 through 2008 tax years, the MTT again concluded that it did not have authority to consider the appeal. For the 2009 tax year, however, the MTT found that there was a question of fact as to whether petitioners protested the property's assessed value before the 2009 Board of Review, and ordered that the parties submit any evidence of such a protest.

Believing that they had obtained a partial victory when the MTT vacated respondent's decision to uncap the taxable value for 2005 through 2008, petitioners moved for reconsideration. They challenged the MTT's decision to order that the taxable values for those years remain as respondent had recently calculated them, believing that when the MTT issued its order to vacate, the taxable values should have reverted to their capped values.

The MTT issued its final order on December 4, 2009, denying petitioners' motion for reconsideration and dismissing the case. The MTT concluded that because neither petitioners nor respondent submitted any evidence that petitioners protested the assessed value for 2009 as

required in its previous order, it had the discretion to dismiss. The MTT did not address petitioners' argument that the incorrect values for the taxable value of the property were entered.

On appeal, petitioners first argue that the MTT's decision to enter the uncapped values for the 2005 through 2008 tax years was clearly erroneous. Petitioners also argue that they were denied due process of law when the MTT decided the issues above without affording them a hearing.

II. TAXABLE VALUE

“[I]n the absence of fraud, review of a Tax Tribunal decision is ‘limited to determining whether the tribunal erred in applying the law or adopted a wrong principle[.]’ ‘[F]actual findings are conclusive if supported by competent, material, and substantial evidence on the whole record.’” *Danse Corp v Madison Hts*, 466 Mich 175, 178; 644 NW2d 721 (2002), quoting *Mich Bell Tel Co v Treasury Dep’t*, 445 Mich 470, 476; 518 NW2d 808 (1994); see also Const 1963, art 6, § 28. “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.” *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992). The proper interpretation and application of a statute is a question of law that we review de novo. *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 438; 716 NW2d 247 (2006).

After reviewing the above orders and the parties' characterizations of them, we deem it necessary to remand for further clarification. As to the MTT's decision concerning the uncapping of the property for the 2005 through 2008 tax years, the September 21, 2009, order appears to be internally inconsistent. Accordingly, there are at least two ways to read the order, with each reading resulting in a different disposition.

Under the first reading, the MTT's decision to vacate the Board of Review's decision could be viewed as granting petitioners a victory on the issue of whether they would owe back taxes on the augmented taxable value of the property. This interpretation is consistent with the statement from the MTT that respondent did not have the authority to retroactively uncap the taxable value for the 2005 through 2008 tax years. While the MTT did not cite any authority upon which it based this conclusion, the MTT arguably relied on MCL 211.53b, which states that a “qualified error” can only be corrected “for the current year and the immediately preceding year.” MCL 211.53b(1). A qualified error includes “[a]n error regarding the correct taxable status of the real property being assessed.” MCL 211.53b(8)(f). We are unsure if this was the authority upon which the MTT relied, however, because the statute allows the Board of Review to correct an error for both the current tax year and the tax year immediately preceding it, and the MTT stated that respondent did not have the authority to uncap the taxable value for 2008.

This interpretation is also consistent with the MTT's decision that respondent had the authority to adjust the 2009 taxable value as if it had uncapped the taxable value in 2005. This would be consistent with MCL 211.53b, because it would be a correction of a qualified error during the current tax year. Therefore, under this reading of the order, when the MTT ordered

that respondent's calculations of the taxable values for the 2005, 2006, 2007, and 2008 tax years be entered as the final values, it was doing so only for purposes of informing respondent as to what the taxable values would have been during those years it uncapped the values in 2005.¹ Consistent with this interpretation, and contrary to respondent's claim, the MTT did reach a decision concerning respondent's attempt to uncap petitioners' taxable value retroactively and collect taxes retroactively for the 2005, 2006, 2007, and 2008 tax years, and the MTT's December 4, 2009, order was intended to deal only with the remaining issue whether petitioner had raised a timely challenge to respondent's 2009 assessment of the property's true cash value.

We note that the MTT's September order is open to another interpretation. The MTT's order can be explained as vacating the Board of Review's decision to uncap the taxable values and collect back taxes for the 2005 through 2008 tax years, but nevertheless subsequently deciding that petitioners' property was subject to uncapping. Such a finding would appear to be inconsistent with MCL 211.53b(1), as well as with the statement of the MTT that "the issue of whether the 2004 transfer should have resulted in an uncapping for the 2005 tax year . . . has not yet been resolved," because it could not enter those new values without resolving that very issue.

Given our inability to resolve the internal inconsistencies in the MTT's order with the record presented, we remand to the MTT for further clarification as to why it entered any determination of the final taxable value when it previously stated it had yet to determine whether uncapping should have occurred, and when it vacated the Board of Review's decision to uncap the taxable value for 2005 through 2008. We also remand for clarification as to why the MTT stated that respondent did not have the authority to uncap the taxable value for 2008, in apparent contradiction of MCL 211.53b(1).

III. DUE PROCESS

The issue of whether a party has been afforded due process is a question of law reviewed de novo. *In re Carey*, 241 Mich App 222, 225-226; 615 NW2d 742 (2000).

In civil cases, due process requires that a party have "an opportunity to be heard in a meaningful time and manner" requiring "a hearing to allow a party the chance to know and respond to the evidence." *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995); see also US Const, Am XIV; Const 1963, art 1, § 17. Hearings in the MTT must be conducted in accordance with the Administrative Procedures Act, MCL 24.271 *et seq.* *Georgetown Place Co-Op v City of Taylor*, 226 Mich App 33, 51-52; 572 NW2d 232 (1997).

¹ Alternatively, the MTT could simply have made a clerical error. The MTT may have meant to set the values as they had been before the Board of Review retroactively augmented them, but instead of entering those values, entered in the new values instead. This would be consistent with the order stating that "the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's taxable values as shown in this Order within 20 days of the entry of this Order" because there would be nothing to correct if the MTT concluded that the Board of Review's new values were to remain in place.

Chapter 4 of the Administrative Procedures Act requires that “[t]he parties in a contested case shall be given an opportunity for a hearing without undue delay.” MCL 24.271(1). “The parties must be given the opportunity to present evidence and arguments regarding issues of fact, cross-examine witnesses, and submit rebuttal evidence.” *Georgetown Place Co-Op*, 226 Mich App at 52, citing MCL 24.272(3), (4). A contested case is defined as “a proceeding, including rate-making, price-fixing, and licensing, in which a determination of the legal rights, duties, or privileges of a named party is required by law to be made by an agency after an opportunity for an evidentiary hearing.” MCL 24.203(3).

Petitioners contend that they were denied due process when they did not have the opportunity to participate in a hearing before the MTT. Respondent does not contest that petitioners were not given a hearing; instead, respondent states that petitioners lost their opportunity for a hearing when petitioners failed to submit evidence that they protested their 2009 appraisal before the 2009 Board of Review. We agree with petitioners.

Petitioners argued in their first motion for reconsideration that they were denied a hearing before the MTT issued its September 21, 2009, order in which it required the parties to submit evidence that petitioners protested their appraisal before the 2009 Board of Review. We cannot find merit in respondent’s position because the alleged denial of the hearing occurred *prior to* the MTT’s order to produce additional evidence. Based on the record available, it appears that the MTT never gave petitioners the opportunity to be heard regarding the uncapping of the taxable value for the 2005 through 2008 tax years, even though petitioner’s claim falls within the definition of a “contested case” and was properly within the jurisdiction of the MTT. See MCL 205.735a(3).

We remand this case to the MTT for clarification. Should the MTT decide that there are issues of fact in dispute, it must afford petitioners a hearing and “the opportunity to present evidence and arguments regarding issues of fact, cross-examine witnesses, and submit rebuttal evidence.” *Georgetown Place Co-Op*, 226 Mich App at 52.

Vacated and remanded. We retain jurisdiction.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Michael J. Kelly

Court of Appeals, State of Michigan

ORDER

Mark G. Rzyzi v Township of Bagley

Docket No. 295759

LC No. 360631

Michael J. Talbot
Presiding Judge

David H. Sawyer

Michael J. Kelly
Judges

Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand in this matter shall commence within twenty-eight days of the Clerk's certification of this order, and they shall be given priority on remand until they are concluded.

The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.

The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

APR 19 2011

Date


Chief Clerk